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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ISABEL WOOD and JONATHAN L. HAAS,
Petitioners,
v.
CHARLES H. LEIST, JR, LAURA N. LEIST,
ROBERT E. JONES, JR., MARLYN JONES,
HUGH W. HULL and LYNNE HULL,
Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Isabel Wood and
Jonathan L. Haas
In Propria Persona
P.O.Box 7461
Phoenix, Arizona 85011
602-277-6001

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Phoenix, Arizona 85011
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QUESTION PRESENTED

Whether the United States Court of Appeals for the Ninth Circuit denied the Petitioners their civil rights when it

1. Affirmed that the District Court correctly concluded as a matter of law that petitioners could not prevail on their claims of violation of 42 U.S.C. § 1985(2) & (3) because the necessary class-based, invidiously discriminatory animus was lacking;

2. Affirmed that the District Court correctly concluded as a matter of law that there were no violations of 42 U.S.C. § 1983;

LIST OF PARTIES

Pursuant to Rule 21.1(b), Rules of the Supreme Court, Petitioner certifies that the following is a complete list of all parties to the proceedings below:

Isabel Wood, a single woman, Petitioner-Plaintiff

Jonathan L. Haas, a single man, Petitioner-Plaintiff

Charles H. Leist, Jr. and Laura N. Leist, husband and wife, Respondents-Defendants

Ronald E. Roth and Linda Roth, husband and wife, Defendants

Robert E. Jones, Jr. and Marlyn Jones, husband and wife, Respondents-Defendants

Hugh W. Hull and Lynne Hull, husband and wife, Respondents-Defendants

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Respondents.

Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petitioners, Isabel Wood and Jonathan L. Haas, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this matter on September 9, 1982.

OPINION BELOW

The Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit and the judgments of the United States District Court for the District of Arizona are repro-

duced in the Appendix.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit entered its Opinion on September 9, 1982. (App. 1a - 19a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment I to the Constitution of the United States of America:

> Congress shall make no laws respecting establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V to the Constitution of the United States of America:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV to the Constitution of the United States of America:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioners, Isabel Wood and Jonathan L. Haas, have been denied their civil rights by Respondents Charles and Laura Leist, Robert and Marlyn Jones and Hugh and Lynne Hull by Petitioner Haas being arrested in the court room just prior to bearing witness against Respondent Charles Leist.

Background

On or about May 15, 1978, Respondant Leist[1] filed a civil action in the Superior Court of the County of Maricopa, State of Arizona, in which Petitioner Wood was named a Third Party Defendant and Respondent Roth was

1. The spouses of the respondents are named solely to obtain jurisdiction over community property assets.

named a Third Party Defendant. Respondent Jones was Leist's attorney in this underlying action and Hull was Roth's attorney.

On or about March 17, 1978, Leist, a City of Phoenix police officer, searched the official police records for any prior convictions or outstanding warrants on the parties to this civil action, as well as on any witnesses to be called in this underlying action. Leist discovered an outstanding warrant for Haas for a traffic violation.

Haas was requested by Wood to testify in this underlying civil action in her behalf. Haas was present on three different dates in the court room while this underlying civil action was in progress[2] and was to testify on January 18, 1980.

Prior to Haas arriving in the court room police officer Leist informed Roth, Jones, Hull and others that he planned to have Haas arrested when he arrived in the court room. Roth, Jones and Hull concurred in this course of

2. The other two occasions were earlier dates, all about a month apart.

action.

Soon after Haas arrived in the court room to testify against Leist, Leist and two other Phoenix police officers entered the court room, knocked Haas to the floor, handcuffed him and dragged him from the court room.

None of the police officers had a copy of the warrant, nor had any of them ever seen a copy of the warrant.

Haas was hidden out in the Phoenix police station until after 5:00p.m., and then incarcerated in the county jail. While in the custody of the police HAAS was assaulted, abused, battered, humiliated and intimidated.

Upon the arrest and abduction of Haas, Wood left the court room and the case was continued. Upon the next trial date Wood again requested Haas to testify in her behalf, but Haas refused for fear of further injury to his person and his family. Judgment was entered against Wood and in favor of Leist in the underlying civil action.

Proceedings in the Trial Court

The complaint was filed on January 16, 1981, in the United States District Court for the District of Arizona, alleging violation of civil rights and obstruction of justice.

Hull moved the court to dismiss the complaint or for a more definite statement on January 28, 1981; the court granted the motion to dismiss the complaint as to Hull on February 25, 1981 for failure to state a claim upon which relief can be granted. Wood and Haas moved the court for finding of fact and conclusions of law and to amend the judgment as to Hull, allowing Wood and Haas to amend the complaint to state a claim upon which relief can be granted. The court denied these motions.

Jones moved the court to dismiss the complaint on February 9, 1981. The court granted the motion to dismiss as to Jones on counts 1 and 3 with leave to Wood and Haas to amend count 1. Wood and Haas filed a first amended complaint as to all Respondents on all counts on April 16, 1981. Jones moved to dismiss the

first amended complaint; the court granted the motion on June 22, 1981.

Leist answered the complaint and moved for summary judgment on April 20, 1981, filing therewith a statement of facts. Wood and Haas filed an opposition to statement of facts and a cross motion for summary judgment as to Leist. The court granted summary judgment in favor of Leist on June 15, 1981.

Roth[3] filed an answer to the complaint on February 5, 1981.

Haas moved for an order of discharge of opposing counsel, John Bouma, and his law firm of Snell & Wilmer as counsel for Jones on February 17, 1981. The court denied the motion on March 16, 1981.

Formal judgments were entered by the District Court as follows: Leist on June 19, 1981; Jones on June 29, 1981; and Hull on July 8, 1981.

Notice of appeal was timely filed on

3. This cause as to Roth is still before the District Court.

July 9, 1981, from the three judgments of the District Court to the Court of Appeals for the Ninth Circuit.

Proceedings in the Appellate Court

Petitioners raised the following questions on appeal:

1. The original complaint and the first amended complaint stated a claim upon which relief can be granted.

2. There are genuine issues of material facts to be litigated which preclude granting defendants Leist motion for summary judgment.

3. The conduct of Defendants Leist, Hull, Jones and Roth constituted a violation of the civil rights of Plaintiffs Haas and Wood under the Civil Rights Act, Title 42, of the United States Code, Section 1983.

4. The conduct of Defendants Leist, Hull, Jones and Roth constituted a conspiracy to violate the civil rights of Plaintiffs Wood and Haas under the Civil Rights Act, Title 42 of the United States Code, Section 1985.

5. The conduct of Defendants Hull, Jones and Roth violated the civil rights of Plaintiffs Wood and Haas under the Civil Rights Act, Title 42 of the United States Code, Section 1986.

6. The conduct of Defendants Leist, Hull, Jones and Roth violated the rights of the Plaintiffs to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and Section 3 of Article 4 of the Constitution of the State of Arizona.

7. The conduct of Defendants Leist, Hull, Jones and Roth constituted a conspiracy to and an obstruction of the administration of justice.

8. The conduct of Defendant Leist was a wrongful and unlawful invasion of the privacy of Plaintiff Haas in violation of Article 2, Section 8, Constitution of the State of Arizona.

9. The court erred in denying Plaintiff Haas motion for discharge of opposing counsel.

On September 9, 1982 the United States Court of Appeals for the Ninth Circuit filed its Memorandum Opinion affirming the judgment of the District Court as to all defendants. (App. 1a). The court found that the necessary class-based, invidiously discriminatory animus was lacking for a violation of 42 U.S.C. § 1985(2) & (3); that a valid section 1985 claim was required for a violation of 42 U.S.C. § 1986; that an arrest pursuant to a warrant did not violate 42 U.S.C. § 1983; that the District Court did not abuse its discretion in dismissing the pendant state claims absent any valid federal claims; and that the District Court erred in denying Haas' motion to disqualify opposing counsel and determined this error was harmless.

The court did not address any of the other issues.

REASON FOR GRANTING THE WRIT

The Court of Appeals for the Ninth Circuit's decision contains two holdings, both of which deny Wood and Haas their constitutionally guaranteed rights to liberty, freedom of speech and due process of law. These denials of constitutionally guaranteed rights resulted from an outrageous abuse of power and rise to the level of shocking the conscience of the court.

I. The Court of Appeals for the Ninth Circuit denied Wood her Constitutional Right to Due Process by Affirming the District Court's Ruling That She Has No Constitutionally Guaranteed Right to Call Witnesses in Her Behalf in a Civil Trial

The Court of Appeals did not directly address the question of constitutionally guaranteed right of a party to a civil action in state courts to call witnesses to testify in their behalf. It is unquestioned that a party to a civil action in state courts is entitled to due process as guaranteed by the

Fifth and Fourteenth Amendments to the Constitution. The issue, then, is whether constitutionally guaranteed due process can exist if one party to a civil action in state court, by virtue of his office, can deprive another party of presenting witnesses on his own behalf. Can the abuse of the power, possessed by virtue of state office, in depriving a party to a civil action of a witness, constitute a deprivation of constitutionally guaranteed due process? We think so.

In the case at bar uniformed police officers accompanied by Leist, plaintiff in a civil action in state court, arrested Haas in the courtroom just moments before he was to testify in the civil action on behalf of Wood, a third party defendant in that same action.

Leist allegedly arrested Haas on an outstanding traffic warrant of which he had knowledge for almost two years. The failure of Leist to perform his sworn duty by not arresting Haas upon first learning of the warrant and "banking" the arrest until it

was more advantageous to him personally constitutes such an outrageous abuse of power that the conscience of this court should be shocked. There is no question that this arrest was under colour of state law. There is no question that this conduct is condoned by the local government. The question that this court must answer is, were any constitutionally guaranteed rights of Wood violated.

II. The Court of Appeals for the Ninth Circuit denied Haas his Constitutional Rights to Liberty and Freedom of Speech by Affirming the District Court's Ruling That Witnesses at Civil Trials Are Not a Protected Class.

The Court of Appeals for the Ninth Circuit cites Rutledge v. Arizona Board of Regents, 660 F.2d 1345, 1355 (9th Cir. 1981), cert. granted, 50 U.S.L.W. 3998.27 (U.S.June 29, 1982) as well as Griffin v. Breckenridge, 403 U.S. 88 (1979) for the requirement that a conspiracy must involve a racial or class-based invidiously discriminatory animus. This language is not to be found in the statute. We will not burden the court with a long disertation on the history of the Civil Rights Act on how this limiting language evolved. This court in Griffin, 403 U.S. at 102, stated:

> "The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial or perhaps otherwise class-bassed, invidiously discriminatory animus behind the conspirators' action."

It is now time for the Court to review and clearify the "...otherwise class-based..." in

light of Representative Shellabarger's remarks,

> "The object ... is ... to confine the authority of this law to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section."

Griffin 403 U.S. at 100 citing Cong. Globe.

The Court of Appeals holds that witnesses have no common characteristics setting them apart from the remainder of the population; they can only be identified by reference to the acts of others. Opinion at p.4. The court cites Note, The Class-Based Animus Requirement of 42 U.S.C. § 1985(c): A Suggested Approach, 64 Minn. L. Rev. 635, 649-50 (1980). This dissertation points out that "'animus against such a group can be considered class-based, [when the group members] share no other trait-racial, religious, ethnic, sexual, geographic or econonic.'(citations omitted)". Not all of these groups are based upon physical characteristics, such as color of skin or sex.

Religious groups share only beliefs. Witnesses are identified by their being at a certain place at a certain time and observing certain facts through their physical senses. A witness may never be called upon to testify in court, or for that matter, may never be identified as a witness. However, he is still a member of this class-based group, and any public officer who fears his position may be challenged is suspect of anyone in this "witness group" who could testify to his detriment. A witness is as much a member of this suspect group as a Jew is a member of a religious group. The witness does not have to be giving testimony in a court room or have his name on a subpoena to be a member of this suspect group, just as a Jew does not have to be wearing a yarmulkah or a prayer shal to be a member of a religious group.

If the class engages in the exercise of a fundamental right and the defendant's actions unnecessarily burden the exercise of that right, members of the class are entitled to

the protection of the law.

> "'it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded.'" William Marbury v. James Madison, Secretary of State of the United States, 1 Cranch 137, 163, 2 L.Ed. 60 (1803) quoting Mr. Justice Black.

This Court has agreed to review this issue as it relates to 42 U.S.C. 1985(2)(cl.1.) by granting certiorari to hear Rutledge, supra. This Court may wish to expand this review to include 1985(2)(cl.2.) as clause 1 already sets forth witnesses in Federal Courts as a protected group. As Congress set forth witnesses as a protected group in clause 1, This Court should acknowledge that it was their intent that they remain a protected group in clause 2 and Section 3.

III. The Court of Appleals For The Ninth Circuit Denied Wood and Haas Of Their Constiutional Rights to Liberty and Freedom of Speech and Due Process by Affirming the District Court's Ruling That A Person Testifying At A Civil Trial Does Not Have A Constitutionally Guaranteed Right To Testify Free From Intimidation And Unreasonable Arrest

The Court of Appeals quotes Baker v. McCollan , 443 U.S. 137 140,"[t]he first inquiry in any 1983 suit...is whether the plaintiff has been deprived of a right 'secured by the Constitution and laws [of the United States].'" Petitioner Haas alleges that his right to bear witness includes the right to appear in the courtroom (liberty, guaranteed by the First Amendment); and the right to testify without intimidation, fear or injury (freedom of speech, guaranteed by the First Amendment). The Court of Appeals did not inquire deeply enough into this right to bear witness.

In the case at bar, Respondent Police Officer Leist admits that he had knowledge of the outstanding warrant against Haas almost two

years before his arrest. Haas appeared in the courtroom with Wood on two prior occassions during the trial of the underlying civil action, but he was not arrested as he was not about to testify against Leist.

Footnote 1 in Baker,443 U.S. at 140 n.1., states, "...the state of mind of the defendant may be relevant on the issue of whether a constitutional violation has occured...". The Court need only ask themselves, Would Leist have arrested Haas just prior to his testifying if Haas were a witness for Leist? The purpose was obviously to prevent Haas from bearing witness against Leist by depriving Haas of his liberty and his freedom of speech.

The Court of Appeals further addresses Baker,443 U.S. at 143,"Absent an attack on the validity of the warrant, no deprivation of a constitutional right occured in this case...respondent was arrested pursuant to a facially valid warrant...".

Haas was not arrested pursuant to a "facial-

ly valid warrant." In fact no warrant was ever seen by Police Officer Leist, the two assisting Phoenix police officers, nor was a warrant ever produced by anyone in the Phoenix Police. Police Officer Leist telephoned his fellow police officers to come to the courtroom and arrest Haas. No one, not even Leist had ever seen the warrant. It was never served on Haas.

The first issue that the Court must address is, Was this a warrantless arrest without probable cause, orwas it an arrest on a warrant, unseen by the arresting officers? Does a computer screen listing an outstanding warrant against Haas constitute a facially valid warrant. The warrant under which Haas was arrested was invalid as it stated on its face "NO BOND", when the Constitution of the State of Arizona mandates bail for all offenses not capital.

Haas also challenged the validity of the warrant In Petitioners Rule 11(h) Opposition to Statement of Facts filed in the district court, on page 1, Haas states "As a result of an error or omission by the Maricopa County Superior Court or the Wickenburg City Prosecutor, a

warrant was issued from the Wickenburg City Court for the arrest of Plaintiff Haas. This is supported by the Affidavit of Plaintiff Haas, Exhibit 1 attached hereto; the Affidavit of David Postal, Haas' attorney in that matter, Exhibit 2 attached hereto; and a letter from Shirley H. Frondorf,then City Prosecutor for the City of Wickenburg, Exhibit 3 attached hereto." The day following the arrest, Haas was released from jail without bail by order of the Superior Court due to the invalidity of the warrant, and without being transported to the issuing Court.

Petitioner Haas contends that challenging the warrant does not require that he play martyr. Haas was the sole parent of two minor children at the time of his arrest. The Court cannot require that he remain in jail while his attorney prepares and argues a writ of Habeus Corpus through the morass of legal procedure, abandoning the care of his minor children and sacrificing his employment. Reason is the life of the law, and to so require is unreasonable.

The Court of Appeals said the "Wood and Haas should look to state law for their remedy". Memorandum, p.6. At the time of the arrest Haas and Wood requested assistance from the trial court judge, the Hon. Jeffrey S. Cates who was so intimidated by the police in his courtroom that he would not interfere. Petitioners later complained to the Phoenix Police Department, which condoned Officer Leist's actions as not an improper or unusual procedure.

The facts of this case are very similar to the situation that existed in the reconstruction era following the Civil War that caused Congress to pass the Civil Rights Acts. Local officials depriving citizens of their constitutional rights to liberty and the freedom of speech, to advance their own ends, has become a widespread practice. This unconscionable conduct by local officials is not limited to an isolated incident complained of herein, but has resulted in defense witnesses in criminal trials being dragged out of the courtroom for

such major offenses as failure to pay child support.

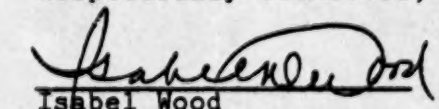
These timely arrests are employed by local officers to influence the course of justice. They are out and out deprivations of constitutionally guaranteed rights to liberty and freedom of speech. Where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. Marbury v. Madison, 1 Cranch 137, 162, 163, 2 L.ED. 60 (1803)

CONCLUSION

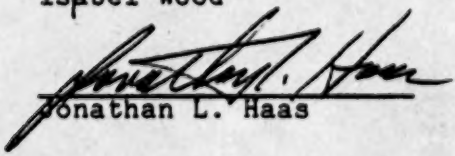
In its opinion, the Court of Appeals for the Ninth Circuit made several determinations which, taken singly or together, deprived Petitioners of their Civil Rights, Due Process, Liberty and Freedom of Speech, as guaranteed by the Fifth, Fourteenth and First Amendments to the Constitution of the United States of America.

For these reasons, a Writ of Certiorari should be granted.

Respectfully submitted,



Isabel Wood



Jonathan L. Haas

Date: December 7, 1982

CERTIFICATE OF SERVICE

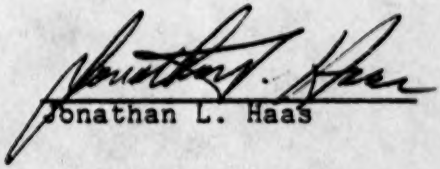
This is to certify that three copies of this Petition for Writ of Certiorari have been served on all parties required to be served, i.e., on Respondents by placing same in envelopes and depositing them in the United States mail, with first class postage prepaid, addressed to counsels of record as follows:

Don C. Stevens, II, Jones, Teilborg, etc.
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Dated this 7th day of December, 1982.



Jonathan L. Haas